Supreme Court, U.S.
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No. 93-1576

In The

Supreme Court of the United States

October Term, 1993

UNITED TEXAS TRANSMISSION COMPANY
(now known as MidCon Texas Pipeline Corp.),

Petitioner.

v.

UNITED STATES ARMY CORPS OF ENGINEERS
and JEFFERSON COUNTY (TEXAS)
DRAINAGE DISTRICT NO. 6,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF FOR RESPONDENT JEFFERSON COUNTY (TEXAS) DRAINAGE DISTRICT NO. 6 IN OPPOSITION

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QUESTION PRESENTED

The U.S. Army Corps of Engineers (Corps) issued permits[1] to lay pipelines across a navigable stream to the predecessor of United Texas Transmission Company (UTTCO) which stated that no property interest was vested in the permittee, and required the permittee to "alter or remove" the pipelines if required "future operations" of the United States. The Corps subsequently instituted the Taylors Bayou project, a "future operation" requiring relocation of UTTCO's pipelines, and notified UTTCO to relocate the pipelines. UTTCO refused, insisting it would not relocate the lines until it was guaranteed full compensation for the cost of relocation from the local sponsor, Jefferson County Drainage District No. 6 (District). The Corps revoked the permits. UTTCO filed suit in the district court against the Corps and the District, the Corps counterclaimed, and the district court ordered the pipelines removed. UTTCO complied, and appealed. The court of appeals affirmed.

UTTCO poses four questions. However, this litigation presents only one question:

> Whether the Corps acted in an arbitrary and capricious fashion, abused its discretion, or otherwise acted not in accordance with law in revoking the UTTCO permits in accordance with ¶ (f) of the permits.

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[1] The permits were issued pursuant to Sec. 10 of the rivers and Harbors Act of 1899, 33 U.S.C. § 403, and are referred to as "Sec. 10" permits.

STATEMENT PURSUANT TO SUP. CT. R. 29.1

This Brief in Opposition is filed on behalf of Jefferson County (Texas) Drainage District No. 6, the local sponsor of the Taylors Bayou Project.

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The District respectfully submits that UTTCO's Petition for Issuance of a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit should be denied for the reasons set out below.

OPINIONS BELOW

The opinions below are correctly referenced in the Petition for Writ of Certiorari and are set out in Appendices "C" and "D" to the petition.

JURISDICTION

This Court does not have jurisdiction because the issues presented in the petition are moot. In the trial court, the only relief sought by UTTCO was (1) a declaration by the court that UTTCO was not required to relocate its pipelines without a guarantee that it would be compensated by the District for the cost of relocation; (2) an injunction restraining the Corps from requiring that the pipelines be relocated; and (3) damages for the cost of relocation. The pipelines have been removed pursuant to order of the district court. Therefore, declaratory relief and injunctive relief are moot. The remedy of damages is also moot. Unconstitutional appropriation of a private property right without compensation is the only possible basis for a claim for damages, but, before filing the petition, UTTCO never asserted a claim based on a constitutional taking. Even if its pleadings could be construed as asserting a taking claim, the claim was instituted in the wrong court. Under the Tucker Act, the court of claims has exclusive jurisdiction of such claims.

STATUTES OR OTHER PROVISIONS INVOLVED

Rivers and Harbors Act of 1899, Sec. 10, 33 U.S.C. § 403; Sec. 11, 33 U.S.C. § 406;
Flood Control Act of 1965, Pub. L. 89-298, 79 STAT. 1073 (Oct. 27, 1965); and
Tucker Act, 24 STAT. 505; 28 U.S.C. § 1491.

STATEMENT OF THE CASE

The Taylors Bayou watershed is in the extreme southeast corner of Texas adjoining the basins of the Neches River and Sabine Lake on the east, Pine Island Bayou on the north, Galveston Bay on the west, and the coastal marshes along the Gulf of Mexico on the south. It is thirty-five miles long, twenty-seven miles wide, and has an area of five hundred eighty-six square miles, of which five hundred fifty-nine are in Jefferson County, Texas. It provides drainage that flows south and east toward the north of Taylors Bayou, into the Intracoastal Canal, and then into the Sabine-Neches Waterway and on into the Gulf of Mexico. Hillebrandt Bayou, the principal tributary of Taylors Bayou, drains an area of approximately one hundred fifty-three square miles.

The struggle to control the recurring and destructive floods in the watershed commenced as early as 1912. Virtually all the tributaries have been widened, deepened, and straightened. Three hundred miles of channels have been improved by enlarging and rectifying natural stream channels in the watershed and by an outfall canal from Taylors Bayou to the Intracoastal Waterway. These efforts were not adequate to control flooding. Damages resulting from just one flood, in 1979, approximated forty million dollars.

After the 1979 flood, Congress appropriated funds for the Taylors Bayou Flood Control Project pursuant to the Flood Control Act of 1965, 79 STAT. 1073, P.L. 89-289. Section 204 of the act stated that the authorized works of improvement, including the Taylors Bayou project, were "**for the benefit of navigation and the control of destructive flood waters and other purposes**". (Emphasis added) According to estimates by the Corps, the project will improve drainage, flood control, and navigation capability. The Jefferson County Navigation District, a co-sponsor of the project, has the responsibility of superintending the widening and deepening of the navigation locks on the southern reaches of Taylors Bayou to allow bigger and more economical tugs and barges to use the navigational facilities of the deepened and widened Taylors Bayou and Hillebrandt Bayou.

Construction on the project did not commence until August, 1982. When work began, the Corps notified UTTCO and requested information regarding the precise location and depth of UTTCO's pipelines. From this information it was determined that each of UTTCO's two pipelines interfered with the project. In February, 1987, UTTCO was notified that if it desired to maintain its pipelines across the bayou, the pipelines had to be lowered to comply with project specifications. The Corps also advised UTTCO that the relocation of the pipelines would have to be accomplished at no cost to the government in accordance with the Corps permits issued in 1957. In particular, UTTCO's attention was directed to ¶ (f) contained in each permit, which provides

> [t]hat if future operations by the United States require an alteration in the position of the structure or work herein authorized . . . the owner will be required upon due notice from the Secretary of the

> Army, to remove or alter the structural work or obstructions caused thereby without expense to the Untied States . . .

UTTCO responded that it would proceed with the relocation as soon as it received assurance from the District that UTTCO would be reimbursed for the entire cost of relocation – approximately one million sixty thousand ($1,060,000.00) dollars. After some negotiation, the Corps, and the District, took the position that under the language of the permits the Corps could require UTTCO to relocate the pipelines at UTTCO's expense.

UTTCO remained fast in its position. The flood control project was delayed by UTTCO's unwavering refusal to relocate its pipelines until it received assurance of reimbursement. Pet. App. 20.[2] For five years, UTTCO refused to do anything at all, insisting that it did not have to relocate its pipelines until it had received assurance that the District would reimburse all its relocation expenses. A public hearing was held in June, 1989, at which UTTCO reiterated its refusal to bear the relocation costs and argued that the Corps had no authority to order such relocation. Following the public hearing, but before its permits were suspended, UTTCO filed this lawsuit seeking monetary, injunctive, and declaratory relief based on the contention that it could not be forced to pay for relocation costs.

Over a year later, in August 1990, the Corps revoked the permits. In August 1991, the district court granted summary judgment against UTTCO, holding that UTTCO's improper

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[2] References in this Brief to petitioner's appendix are referred to as Pet. App.; and references in this Brief to respondent's appendix are referred to as Resp. App.

refusal to obey the Corps' order to relocate the pipelines authorized the Corps to revoke the permits and order the pipelines removed under the language in ¶ (f) of the permits. The court of appeals affirmed, and, in the course of its opinion, noted that any wounds suffered by UTTCO were self inflicted while playing "hardball" and engaging in the strong-arm tactic of refusing to relocate its pipelines, in the face of the clear authority of the Corps to order the relocation, and demanding that the District assure it of reimbursement for the entire relocation costs without any legal right to do so. Pet. App. 39.[3]

REASONS FOR DENYING THE WRIT

1. The Corps acted properly in revoking UTTCO's permits.

The court of appeals correctly stated that "[t]he scope of the Corps' authority under § (f) [of the Sec. 10 permits] to demand relocation of the pipelines at the expense of the permit holder is at the heart of this lawsuit," Pet. App. 19, and aptly noted that the Court was concerned with "the Corps' authority under § 10 permits and not why it may have chosen to exercise that authority." *Id.*, n.4.

UTTCO's position throughout the litigation has been that the Corps had no authority to order any relocation without a guarantee of payment of the relocation expense.

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[3] For a more complete statement, reference is made to the statement of facts and procedural history of the case set out in the opinion of the court of appeals, which is adopted by the District.

The court of appeals rejected this contention, as did the district court, holding that the permit language "clearly gives the Corps the authority to order the relocation of the pipelines inside the boundaries of the original permit area at the expense of the pipeline owners," with the limitation that "[t]he clear language of the permits limits . . . " the Corps' authority to impose costs to those costs properly allocable to relocation work between the banks of the bayou as they existed at the time the permits were granted. In the petition, UTTCO skirts the premise on which the lower courts' holdings were based even though, in the trial court, UTTCO admitted that it was responsible for costs of relocation of its pipelines within the original banks.[4] Now, however, UTTCO steadfastly asserts that it is not, and never has been, responsible for payment of any portion of the relocation costs, all of which, it insists, must be borne by the District.

The court of appeals correctly held that UTTCO's "unflagging" refusal to relocate the lines was adequate ground to support the administrative action of the Corps in revoking the permits. UTTCO's sole right to place its pipelines in the navigable stream were conferred by the permits. Resp. App. 1-11. As the court of appeals said, the phrase "work herein authorized" in ¶ 7 of the permits conferred on the Corps the power to impose on utility companies the cost of "alterations to portions of the pipelines within the bayou's channel as it existed when the § 10

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[4] The court of appeals noted in its opinion that "[i]nterestingly, the Corps' findings often quote correspondence from UTTCO in which it asserted a willingness to pay for alterations that it recognized needed to be made inside the original permit area". Pet. App. 38, n. 33.

permits were granted" as required by "future operations of the United States." Pet. App. 26.

Unquestionably, the Taylors Bayou project was such an operation. In light of UTTCO's contumacious refusal to relocate the pipelines, it was not necessary for the court of appeals to consider the intent of Congress in passing the Flood Control Act of 1965, 79 STAT. 1073, because the revocation of the permits resulted in the loss of the only right of the permittee, UTTCO, to maintain obstructions in the navigable stream. As the court of appeals observed,

> [i]f UTTCO had only complied with the Corps' order (even under formal protest), relocated the pipelines, and sued for compensation for the portions of its private easements that were taken and for the costs associated with the relocation in the fastlands, then, under the reasoning set out above, UTTCO clearly would have been entitled to recover. UTTCO did not, however, follow this course. Instead, UTTCO delayed the project by demanding assurances of full compensation – to which it was not entitled – before it would begin work on the relocation. As it turns out, UTTCO's recalcitrance constitutes a valid cause for the Corps to revoke the § 10 permits. As UTTCO never challenged the Corps' authority to order the relocation, but nevertheless refused absolutely to relocate the pipelines, we cannot say that the Corps abused its discretion by revoking UTTCO's permits.
>
> . . . .
>
> As a consequence of those permit revocations, UTTCO lost the option to relocate its pipelines, leaving itself no alternative but to remove those

> portions, both within and without the original permit areas, that need to be moved so that construction of the project could proceed.

Pet. App. 40-41. The alteration and removal language contained in the permits was conditioned only on the requirements of the government, i.e., the Corps. Assuming, as argued by UTTCO, in enacting the Flood Control Act Congress intended local sponsors to bear relocation costs, this does not alter UTTCO's unquestioned contractual duty to the United States to alter or remove its pipelines as required by the Corps' operations.

2. The questions presented in the petition do not raise the controlling issue on which the district court and the court of appeals correctly decided the case.

In the petition, UTTCO poses four questions, each of which is based on an insupportable assumption and none of which was directly raised in the trial court or the court of appeals. Question 1 assumes that Congress conditioned approval of an appropriation of funds for a flood control project upon a requirement that the project's local sponsor acquire all lands and easements and make all necessary utility relocations. Question 2 assumes that the local sponsor, i.e. the District, failed to acquire the necessary property and make the necessary utility relocations it had undertaken to acquire or perform. Question 3 assumes that the court of appeals held that the Corps' permit powers conferred authority upon the Corps in fastlands outside the "permitted area" and the area subject to the federal navigational servitude. Question 4 assumes that the court of appeals held that the Corps could rely upon permit conditions to demand relocations of sections of pipelines not within the permitted

area to facilitate construction of a flood control project having no navigational purpose.

The baseless assumptions in questions 1 and 2 are transformed in UTTCO's petition, p. 6, into a "congressional mandate" "that the projects local sponsor acquire all lands, easements, and rights of way, and *make all utility relocations* necessary for the completion of the project." (Emphasis supplied.) To sustain the assumption in question 1, UTTCO relied on 33 U.S.C. § 701(c), which provides that no appropriated funds shall be expended on the construction of a project until a responsible local agency has given assurance that it will provide " . . . all lands, easements, and rights-of-way necessary for the construction of the project . . . " Neither § 701(c), nor any other statute or act relied on by UTTCO, mentions relocation or alteration of utilities either in the navigable stream or elsewhere. The only act speaking to alteration or removal of pipelines or other obstructions in a navigable stream is 33 U.S.C. §§ 403 and 406, which is the Corps' long-standing authority for issuance and revocation of permits, such as the § 10 permits issued to UTTCO.

It is undisputed that the District complied with § 701(c) by entering into a local cooperation agreement with the United States. UTTCO argues that the District did not have the funds to pay for relocation of UTTCO's pipelines and conjures a "conspiracy" theory involving the District, the Corps and a Congressman, but offers no factual or legal explanation how the accomplishment of a lawful result, authorized by statute, gives rise to any

right of action in its favor. In fact, UTTCO can find no support of any kind for its position.[5]

The provisions of 33 U.S.C. § 701(c) are not germane to the argument made by UTTCO. Likewise, the provisions of 33 U.S.C. §§ 593 and 594 relating to institution of condemnation proceedings have no application because they concern only interests in land (i.e., land or easements), and UTTCO owned neither land nor easement in the bed of Hillebrandt Bayou. It possessed only revocable permits or licenses to lay its lines across the bayou. Since the permits, by their express terms, convey no real or personal property interest to UTTCO, and since no property right was conveyed by the Corps or vested in UTTCO pursuant to the permits, no property rights could be taken from UTTCO by revocation of the permits and no interest existed that was subject to condemnation.[6]

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[5] Only a statute stating that UTTCO did not have to relocate its lines until it was *guaranteed* that payment for the relocation would be made by the local sponsor would support UTTCO's position.

[6] Contrary to UTTCO's argument, there is no "statutory scheme" for the exercise of the power of eminent domain to compel performance of the requirements of ¶ (f) in the permits. The statutes cited by UTTCO refer to "lands and easements", but what the Corps demanded was the relocation of UTTCO's pipelines to accommodate the federal project. The exercise of eminent domain to acquire fee title, including title to the pipelines and easements on the "fastland", would not have resulted in the "alteration or removal" of the lines that interfered with completion of the project, which the Corps sought. If UTTCO was correct that the Corps could not exercise its power under the § 10 permit, UTTCO could not be compelled to "alter or remove" its lines even *after* the exercise of eminent domain to acquire UTTCO's easements. UTTCO's argument demonstrates why ¶ (f) is contained in § 10 permits.

As the federal partner charged with actual construction of the project, only the Corps took action to compel UTTCO's relocation of the pipelines. Indeed, UTTCO ultimately removed the pipelines, not at the instance of the Corps, but in response to an order of the district court.[7] The District agreed with the Corps to provide, and did provide, lands and easements and certain utility locations outside navigable streams at no cost to the Corps, but UTTCO has not cited, and cannot cite, any act by the District designed to compel the relocation of the UTTCO pipelines. The Corps had statutory authority to invoke the conditions of the pipeline permits. By accepting the permits, UTTCO was contractually bound to relocate the lines as directed by the Corps.

Thus, the assumption made by UTTCO in question 1 is factually and legally incorrect. The Corps had the right to cancel the permits without invoking eminent domain authority. Likewise, question 2 incorrectly assumes that the District failed to acquire the necessary property and make the necessary utility relocations "it [had] undertaken to acquire and/or perform". The assumption in question 3 that the court of appeals extended the Corps'

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[7] Pertinent to this point is the observation in the opinion of the court of appeals that

> [t]he Corps noted that UTTCO had been notified repeatedly of the need to relocate the pipelines, but that UTTCO had consistently refused to comply. The Corps also asserted that it had authority to revoke the permits of a recalcitrant permit holder, such at UTTCO, citing a string of precedents which held that a permit holder does not have a vested interest in the permit.

permit authority to fastlands outside the original permitted area is also in error. The court of appeals held that the cost of substantial relocation of the pipelines in the fastlands was compensable but no compensation was due pipeline owners for costs that were merely incidental to relocation within the permitted area.[8] In either case, the pipeline owners are required to alter or remove their pipelines to accommodate a federal project. Likewise, the suggestion in the statement of question 4 that the Taylors Bayou project had no navigational purpose is belied by the expression of the purpose of the Flood Control Act of 1965, and by the fact that deepening and widening of the bayou had obvious benefits to navigation.

3. The decision of the court of appeals is not in conflict with the decision of another United States Court of Appeals.

The court of appeals' opinion is not in conflict with the Eleventh Circuit's opinion in *United States v. Harrell*, 926 F.2d 1036 (1th Cir. 1991), as suggested by UTTCO. *Harrell* was not a permit case, and merely stands for the proposition that whether a stream is "navigable in fact" is a judicial question. UTCO has never contended that Hillebrandt Bayou is not a navigable stream.

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[8] In support of this holding, the court of appeals relied on the prior decision in *United States v. 596.75 Acres in St. Martin Parish, La.*, 241 F.Supp. 796 (W.D. La. 1965).

4. The decision of the Fifth Circuit Court of Appeals is not in conflict with any of its own decisions.

The court of appeals' opinion is not in conflict with its opinion in *Tenneco v. Greater LaFourche Port Commission*, 427 F.2d 1061 (5th Cir. 1970). The court below clearly distinguished *Tenneco* from the present case. In *Tenneco*, neither the Corps nor the United States was a party, the case did not involve a federal project, and the Corps was not involved in the project. *Tenneco* merely held that a local sponsor could not invoke the § 10 permit in a non-federal project. In this case, the District made no claim that the permits inured to its benefit.

5. The decision of the Fifth Circuit Court of Appeals is not in conflict with any decision of this Court and involves no important question of federal law.

The court of appeals' decision is not in conflict with this court's opinion in *Kaiser Aetna v. United States*, 444 U.S. 164, 100 S. Ct. 383, 62 L. Ed. 2d 332 (1979), or with this court's opinion in *Nollan v. California Coastal Commission*, 483 U.S. 825, 107 S. Ct. 3141, 97 L. Ed. 2d 677 (1987), and involves no important question of federal law.

In *Nollan v. California Coastal Commission*, 483 U.S 825, 107 S.Ct. 3141, 97 L.Ed. 2d 677 (1987), the Nollans had a property interest, i.e., a lease coupled with an option to purchase the fee, which option they subsequently exercised. The granting of the permit which the Nollans sought was conditioned on their conveyance to the government of a valuable property right (the right to exclude others from their property) for public use.

UTTCO had no such property interest. The permits issued by the Corps and accepted by UTTCO plainly state that

> [i]t is to be understood that this instrument does not give any property rights either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to private property or invasion of private rights, or any infringement of Federal, State, or local laws or regulations, nor does it obviate the necessity of obtaining State assent to the work authorized. **It merely expresses the assent of the Federal Government so far as concerns the public rights of navigation.** (Emphasis in text.)

By acceptance of the permit, UTTCO acknowledged it had no property right which could be affected by the exercise of condition (f).

Even if UTTCO had owned a valuable property interest, a condition imposed on the use of private property meets the constitutional standard of *Nollan* if the condition serves the same purpose as a refusal to issue the permit in the first place, provided such refusal would not constitute a taking. As stated in this Court's opinion in *Nollan:*

> The Commission argues that a permit condition that serves the same legitimate police-power purpose as a refusal to issue the permit should not be found to be a taking if the refusal to issue the permit would not constitute a taking. We agree. (483 U.S. 836)

If the Taylors Bayou Flood Control Project had been designed and appropriated when issuance of UTTCO's

permits was requested, a legitimate police-power purpose would have been served had the Corps refused to issue the permits for placement of the pipelines in the navigable stream without an agreement from UTTCO to place them so as not to interfere with the dredging required to widen and deepen the channel of the stream in conformity with the plans for the project. Precisely the same purpose was served by the inclusion of ¶ (f) of the permit which required the permittee to "alter or remove" its pipeline to accommodate a future operation of the United States in aid of navigation.

UTTCO complains that the Taylors Bayou Flood Control Project had no navigational purpose, and because the project served no navigational purpose, the "invocation" of the condition contained in the permit served no police-power purpose. Without considering whether this extension of *Nollan* is appropriate, it is sufficient to state that its underlying premise (i.e., the project was not in aid of navigation) is totally incorrect.

The Flood Control Act of 1965, Pub. L. 89-298; 79 STAT. 1073, § 204, plainly states that

> the following works of improvement *for the benefit of navigation and the control of destructive flood waters and other purposes* are hereby adopted and authorized to be prosecuted under the direction of the Secretary of the Army and the supervision of the Chief of Engineers in accordance with the plans in the respective reports hereinafter designated and subject to the conditions set forth therein. (Emphasis supplied.)

As this Court stated in *United States v. Twin City Power Co.*, 350 U.S. 222, 224, 76 S. Ct. 259, 261, 100 L. Ed. 240,

259 (1956), in reversing a court of appeals determination that flood control and water-power development, not improvement of navigation, was the purpose of the project in question:

> It is not for courts, however, to substitute their judgments for congressional decisions on what is or is not necessary for the improvement or protection of navigation. (Citations omitted.) The role of the judiciary in reviewing the legislative judgment is a narrow one in any case. (Citations omitted.) The decision of Congress that this project will serve the interest of navigation involves engineering and policy considerations for Congress and Congress alone to evaluate. Courts should respect that decision until and unless it is shown "to involve an impossibility," as Mr. Justice Holmes expressed it in *Old Dominion Land Co. v. United States.* (Citation omitted.) *If the interests of navigation are served, it is constitutionally irrelevant that other purposes may also be advanced.* (Citations omitted.) As we said in the *Appalachia Power Co., "Flood protection, watershed development,* recovery of the costs of improvements through utilization of power are likewise parts of commerce's control." 311 U.S., at page 426, 61 S.Ct. at page 308.
>
> The interest of the United States in the flow of a navigable stream originates in the Commerce Clause. That Clause speaks in terms of power, not of property. But the power is a dominant one which can be asserted to the exclusion of any competing or conflicting one. The power is a privilege which we have called "a dominant servitude" (citations omitted) or "a superior navigation easement." (Emphasis added.)

UTTCO also asserts that " . . . the use of powers under § 10 of the Rivers and Harbors Act (33 U.S.C. § 403) against compensable property interests in lieu of condemnation proceedings is flatly contradictory to this Court's opinion in *Kaiser Aetna* . . . " While the police power may not be substituted for the payment of compensation for a taking, *Kaiser* does not support UTTCO's contention in this case.

UTTCO derived no property interest from the permits issued by the Corps. The court of appeals recognized that, if it had relocated its pipelines, UTTCO had a property interest in easements and a right to compensation outside the permitted area. However, UTTCO lost the option to relocate the pipelines as a result of the permit revocations. Therefore, it lost any right to compensation, *unless* the Corps abused its discretion, acted arbitrarily, capriciously, or otherwise acted not in accordance with law. Whether the agency abused its discretion in revocation of the permits has been correctly determined and, in any event, presents no important question of federal law.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

THAD HEARTFIELD
JACK N. PRICE
GUY GOODSON

Attorneys for Respondent

DEPARTMENT OF THE ARMY

NOTE. – It is to be understood that this instrument does not give any property rights either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to private property or invasion of private rights, or any infringement of Federal, State, or local laws or regulations, nor does it obviate the necessity of obtaining *State assent* to the work authorized. IT MERELY EXPRESSES THE ASSENT OF THE FEDERAL GOVERNMENT SO FAR AS CONCERNS THE PUBLIC RIGHTS OF NAVIGATION. (See *Cummings v. Chicago*, 188 U. S., 410.)

W-N-243-41-PERMIT-1728

PERMIT

Office of the District Engineer
Galveston District, Corps of Engineers.
Galveston, Texas

13 November, 1951.

United Gas Pipe Line Company
Shreveport 92, Louisiana

Gentlemen:

Referring to written request dated 16 October 1951 I have to inform you that, upon the recommendation of the Chief of Engineers, and under the provisions of Section 10 of the Act of Congress approved March 3, 1899, entitled "An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," you are hereby authorized by the Secretary of the Army to place a 20-inch pipe line across Hillebrandt Bayou at a location approximately 1,000 feet upstream from the Fannette-Port

Acres Road bridge and 9 miles west from Port Arthur, Texas, in accordance with the plans shown on the drawing attached hereto in one sheet, entitled, "PROPOSED 20" PIPE LINE ACROSS HILLEBRANDT BAYOU, JEFFERSON COUNTY, TEXAS," subject to the following conditions:

(*a*) That the work shall be subject to the supervision and approval of the District Engineer, Corps of Engineers, in charge of the locality, who may temporarily suspend the work at any time, if in his judgment the interests of navigation so require.

(*b*) That any material dredged in the prosecution of the work herein authorized shall be removed evenly and no large refuse piles, ridges across the bed of the waterway, or deep holes that may have a tendency to cause injury to navigable channels or to the banks of the waterway shall be left. If any pipe, wire, or cable hereby authorized is laid in a trench, the formation of permanent ridges across the bed of the waterway shall be avoided and the back filling shall be so done as not to increase the cost of future dredging for navigation. Any material to be deposited or dumped under this authorization, either in the waterway or on shore above high-water mark, shall be deposited or dumped at the locality shown on the drawing hereto attached, and, if so prescribed thereon, within or behind a good and substantial bulkhead or bulkheads, such as will prevent escape of the material in the waterway. If the material is to be deposited in the harbor of New York, or in its adjacent or tributary waters, or in Long Island Sound, a permit therefor must be previously obtained from the Supervisor of New York Harbor, Whitehall Building, New York City.

(*c*) That there shall be no unreasonable interference with navigation by the work herein authorized.

(*d*) That if inspections or any other operations by the United States are necessary in the interest of navigation, all expenses connected therewith shall be borne by the permittee.

(*e*) That no attempt shall be made by the permittee or the owner to forbid the full and free use by the public of all navigable waters at or adjacent to the work or structure.

(*f*) That if future operations by the United States require an alteration in the position of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army, it shall cause unreasonable obstruction to the free navigation of said water, the owner will be required upon due notice from the Secretary of the Army, to remove or alter the structural work or obstructions caused thereby without expense to the United States, so as to render navigation reasonably free, easy, and unobstructed; and if, upon the expiration or revocation of this permit, the structure, fill, excavation, or other modification of the watercourse hereby authorized shall not be completed, the owners shall, without expense to the United States, and to such extent and in such time and manner as the Secretary of the Army may require, remove all or any portion of the uncompleted structure or fill and restore to its former condition the navigable capacity of the watercourse. No claim shall be made against the United States on account of any such removal or alteration.

(*g*) That the United States shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the Government for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.

(*h*) That if the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the U. S. Coast Guard, shall be installed and maintained by and at the expense of the owner.

(*i*) That the permittee shall notify the said district engineer at what time the work will be commenced, and as far in advance of the time of commencement as the said district engineer may specify, and shall also notify him promptly, in writing, of the commencement of work, suspension of work, if for a period of more than one week, resumption of work, and its completion.

(*j*) That if the structure or work herein authorized is not completed on or before the thirty-first day of December, 1954, this permit, if not previously revoked or specifically extended, shall cease and be null and void.

(k) That if, in the judgment of the Chief of Engineers, the said permittee does not at all times exercise due caution in the transportation of oil, gas, or other pollutive, noxious or lethal substances, to prevent conditions deleterious to health or sea food, or hazardous to navigation, or dangerous to persons or property engaged in commerce or otherwise on said waters, this permit

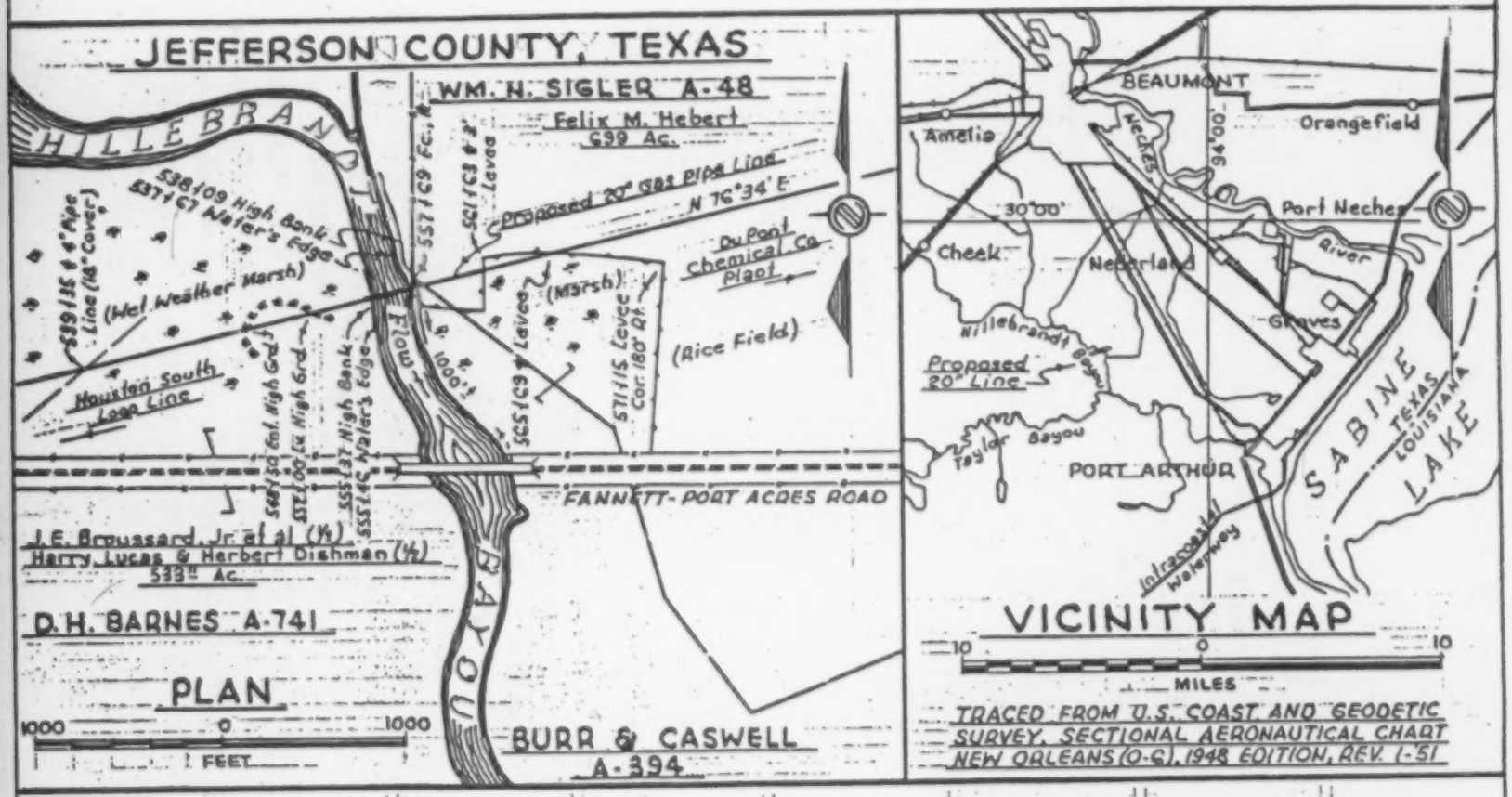
may be revoked and all operations authorized by it may be terminated.

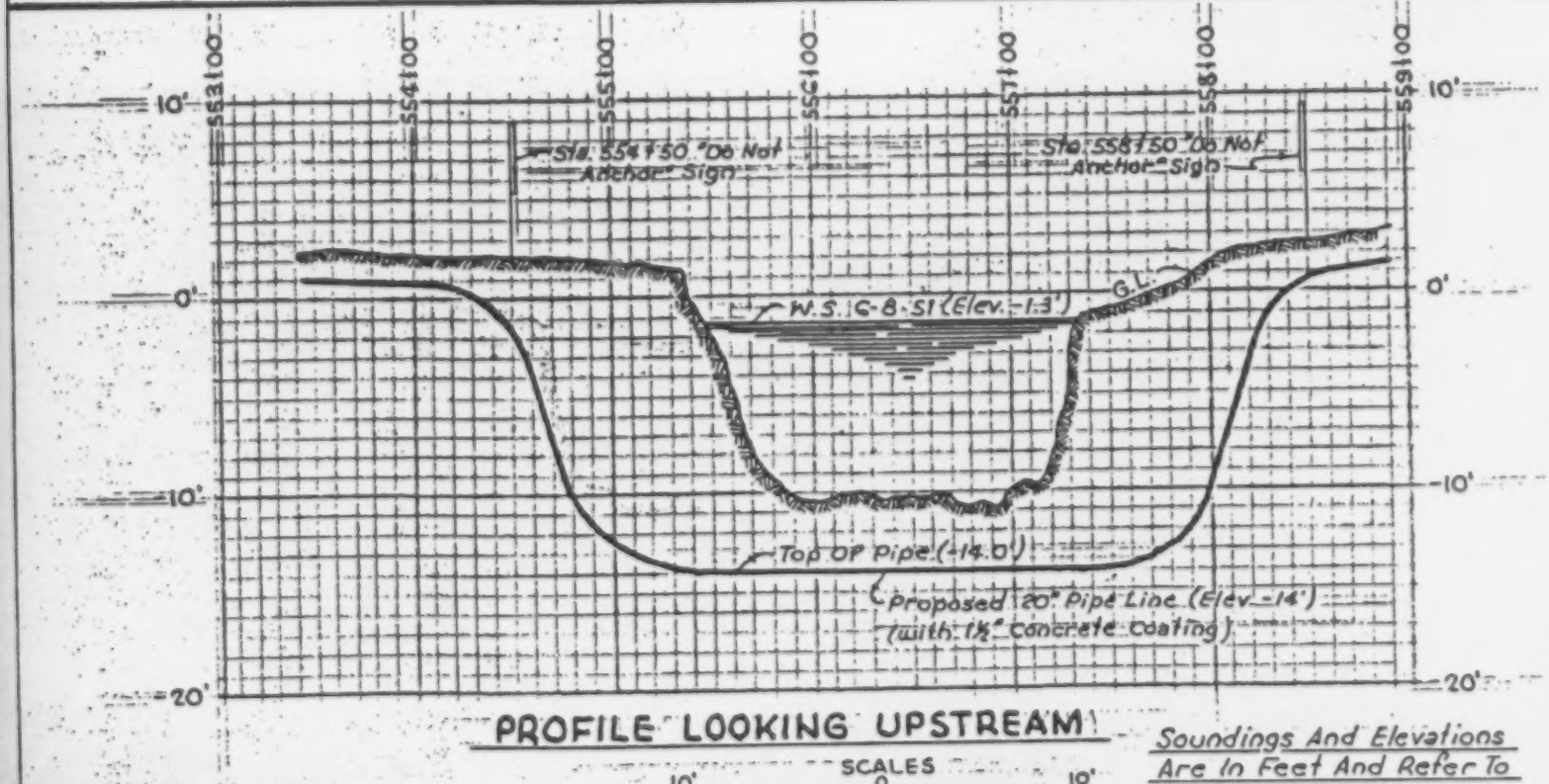
By authority of the Secretary of the Army:

FOR COLONEL J. D. LANG, DISTRICT ENGINEER:

/s/ William G. Neely
WILLIAM G. NEELY
Chief, Permit Branch

1 drawing attached





PROFILE LOOKING UPSTREAM

SCALES

Vertical 10' 0 10'

Horizontal 100' 0 100'

Soundings And Elevations Are In Feet And Refer To Mean Sea Level.

This Pipe Line To Be Used To Transport Natural Gas To Beaumont And Orange Area.

APPLICATION BY:
UNITED GAS PIPE LINE CO.
DATE: 10-11-51

PROPOSED 20" PIPE LINE ACROSS HILLEBRANDT BAYOU JEFFERSON COUNTY, TEXAS

DEPARTMENT OF THE ARMY

NOTE. – It is to be understood that this instrument does not give any property rights either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to private property or invasion of private rights, or any infringement of Federal, State, or local laws or regulations, nor does it obviate the necessity of obtaining *State assent* to the work authorized. IT MERELY EXPRESSES THE ASSENT OF THE FEDERAL GOVERNMENT SO FAR AS CONCERNS THE PUBLIC RIGHTS OF NAVIGATION. (See *Cummings v. Chicago*, 188 U. S., 410.)

W-N-243-41-PERMIT-3779

PERMIT
Office of the District Engineer
Galveston District, Corps of
Engineers.
Galveston, Texas

18 March, 1957.

Humble Oil & Refining Company
P. O. Box 2180
Houston 1, Texas

Contract unnumbered

Gentlemen:

Referring to written request dated 22 February 1957 I have to inform you that, upon the recommendation of the Chief of Engineers, and under the provisions of Section 10 of the Act of Congress approved March 3, 1899, entitled "An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," you are hereby authorized by the Secretary of the Army to place a 16-inch pipe line, the dredged material from the crossing to

be placed on shore, in Hillebrandt Bayou at a location approximately 9 miles south from Beaumont, Texas, in accordance with the plans shown on the drawing attached hereto entitled, "PROPOSED 16" PIPE LINE CROSSING UNDER HILLEBRANDT BAYOU ABOUT 9 MILES SOUTH 11° WEST FROM BEAUMONT, JEFFERSON CO., TEXAS.," subject to the following conditions:

(*a*) That the work shall be subject to the supervision and approval of the District Engineer, Corps of Engineers, in charge of the locality, who may temporarily suspend the work at any time, if in his judgment the interest of navigation so require.

(*b*) That any material dredged in the prosecution of the work herein authorized shall be removed evenly and no large refuse piles, ridges across the bed of the waterway, or deep holes that may have a tendency to cause injury to navigable channels or to the banks of the waterway shall be left. If any pipe, wire, or cable hereby authorized is laid in a trench, the formation of permanent ridges across the bed of the waterway shall be avoided and the back filling shall be so done as not to increase the cost of future dredging for navigation. Any material to be deposited or dumped under this authorization, either in the waterway or on shore above high-water mark, shall be deposited or dumped at the locality shown on the drawing hereto attached, and, if so prescribed thereon, within or behind a good and substantial bulkhead or bulkheads, such as will prevent escape of the material in the waterway. If the material is to be deposited in the harbor of New York, or in its adjacent or tributary waters,

or in Long Island Sound, a permit therefor must be previously obtained from the Supervisor of New York Harbor, New York City.

(*c*) That there shall be no unreasonable interference with navigation by the work herein authorized.

(*d*) That if inspections or any other operations by the United States are necessary in the interest of navigation, all expenses connected therewith shall be borne by the permittee.

(*e*) That no attempt shall be made by the permittee or the owner to forbid the full and free use by the public of all navigable waters at or adjacent to the work or structure.

(*f*) That if future operations by the United States require an alteration in the position of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army, it shall cause unreasonable obstruction to the free navigation of said water, the owner will be required upon due notice from the Secretary of the Army, to remove or alter the structural work or obstructions caused thereby without expense to the United States, so as to render navigation reasonably free, easy, and unobstructed; and if, upon the expiration or revocation of this permit, the structure, fill, excavation, or other modification of the watercourse hereby authorized shall not be completed, the owners shall, without expense to the United States, and to such extent and in such time and manner as the Secretary of the Army may require, remove all or any portion of the uncompleted structure or fill and restore to its former condition the navigable capacity of the watercourse. No claim shall be made against the

United States on account of any such removal or alteration.

(*g*) That the United States shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the Government for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.

(*h*) That if the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the U. S. Coast Guard, shall be installed and maintained by and at the expense of the owner.

(*i*) That the permittee shall notify the said district engineer at what time the work will be commenced, and as far in advance of the time of commencement as the said district engineer may specify, and shall also notify him promptly, in writing, of the commencement of work, suspension of work, if for a period of more than one week, resumption of work, and its completion.

(*j*) That if the structure or work herein authorized is not completed on or before the thirty-first day of December, 1960, this permit, if not previously revoked or specifically extended, shall cease and be null and void.

(k) That if, in the judgment of the Chief of Engineers, the said permittee does not at all times exercise due caution in the transportation of oil, gas, or other pollutive, noxious or lethal substances, to prevent conditions deleterious to health or sea food, or hazardous to

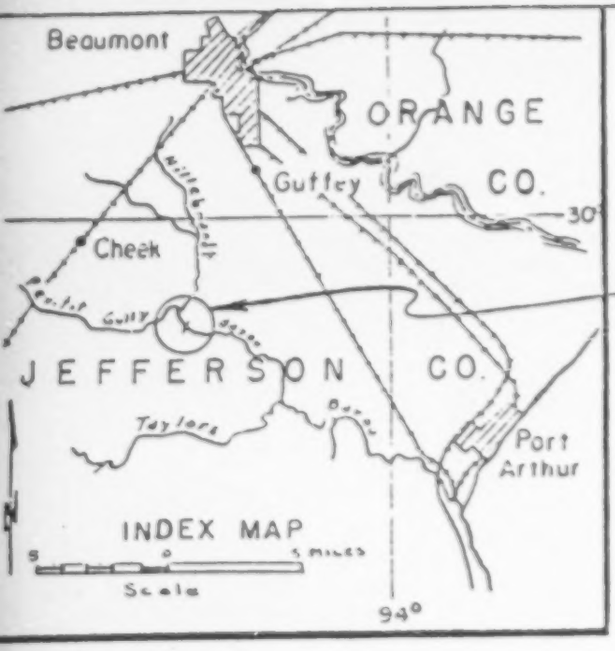
navigation, or dangerous to persons or property engaged in commerce or otherwise on said waters, this permit may be revoked and all operations authorized by it may be terminated.

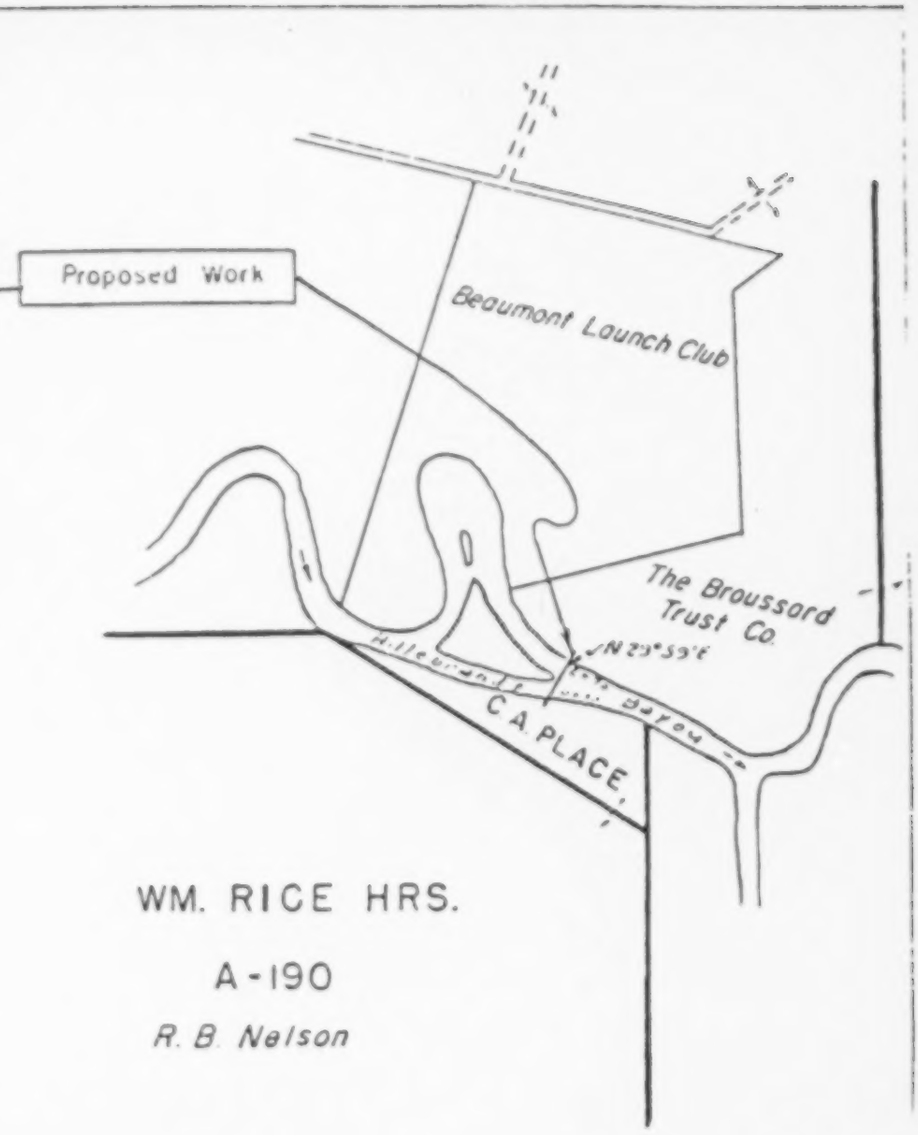
By authority of the Secretary of the Army:

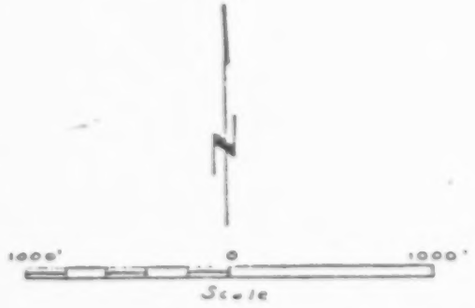
FOR COLONEL W. P. McCRONE, DISTRICT ENGINEER:

/s/ William G. Neely
WILLIAM G. NEELY
Chief, Permit Branch

1 drawing attached



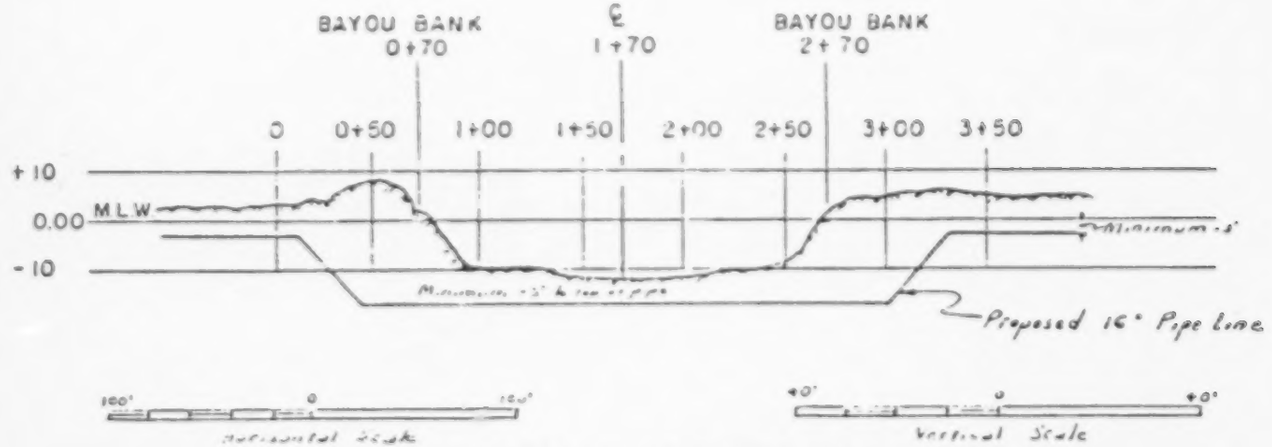




WM. RICE HRS.

A-190

R. B. Nelson



CROSS SECTION LOOKING UPSTREAM

APPLICATION BY HUMBLE OIL & REFINING COMPANY DATED FEBRUARY 22, 1957	*PROPOSED 16" PIPE LINE CROSSING UNDER HILLEBRANDT BAYOU ABOUT 9 MILES SOUTH 11° WEST FROM BEAUMONT, JEFFERSON CO., TEXAS.*